

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sasha Linney	Team: Team # 5	CCRB Case #: 200501165	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 01/15/2005 8:20 PM, Tuesday, 02/01/2005	Location of Incident: § 87(2)(b)	Precinct: 71	18 Mo. SOL 7/15/2006	EO SOL 7/15/2006	
Date/Time CV Reported Wed, 02/02/2005 3:03 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 02/02/2005 3:03 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Joel Cummings	23946	920171	071 PCT
2. SGT Eric Delman	01832	922228	071 PCT
3. DT3 Saed Rabah	07604	914919	NARCBBS
4. POF Diana Spangenberg	19067	929195	NARCBBS
5. POM Ohmeed Davodian	14091	926740	NARCBBS
6. POM Yuriy Posternak	21394	933198	071 PCT
7. POM Vincent Schiavarelli	26649	933336	071 PCT
8. Officers			
9. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Mark Zajac	20933	931472	071 PCT
2. POM Kevin Bischoff	08970	929733	071 PCT
3. SGT Louis Balsamo	01704	911430	078 DET
4. DT3 Andrew Marage	04164	914592	DB BSVS
5. POM Courtney Adams	29574	919974	088 PCT
6. DT3 Robert Brown	00890	891322	NARCBBS

Officer(s)	Allegation	Investigator Recommendation
A.POF Diana Spangenberg	Abuse: On January 15, 2005, at § 87(2)(b) in Brooklyn, Officer Diana Spangenberg stopped and questioned § 87(2)(b)	
B.DT3 Saed Rabah	Abuse: On January 15, 2005, at § 87(2)(b) in Brooklyn, Detective Saed Rabah stopped and questioned § 87(2)(b)	
C.POM Ohmeed Davodian	Abuse: On January 15, 2005, at § 87(2)(b) in Brooklyn, Officer Ohmeed Davodian stopped and questioned § 87(2)(b)	
D.POF Diana Spangenberg	Abuse: On January 15, 2005, at § 87(2)(b) in Brooklyn, Officer Diana Spangenberg drew her gun.	

Officer(s)	Allegation	Investigator Recommendation
E.DT3 Saed Rabah	Abuse: On January 15, 2005, at § 87(2)(b) in Brooklyn, Detective Saed Rabah drew his gun.	
F.POM Ohmeed Davodian	Abuse: On January 15, 2005, at § 87(2)(b) in Brooklyn, Officer Ohmeed Davodian drew his gun.	
G.DT3 Saed Rabah	Force: On January 15, 2005, at § 87(2)(b) in Brooklyn, Detective Saed Rabah used physical force against § 87(2)(b)	
H. Officers	Force: On January 15, 2005, at § 87(2)(b) in Brooklyn, officers used physical force against § 87(2)(b)	
I. An officer	Force: On January 15, 2005, at § 87(2)(b) in Brooklyn, an officer pointed his gun at § 87(2)(b)	
J. An officer	Abuse: On January 15, 2005, at § 87(2)(b) in Brooklyn, an officer threatened § 87(2)(b) and individuals with the use of force.	
K.POM Ohmeed Davodian	Abuse: On January 15, 2005, at § 87(2)(b) in Brooklyn, Officer Ohmeed Davodian threatened § 87(2)(b) with the use of force.	
L.POM Ohmeed Davodian	Abuse: On January 15, 2005, en route to the 71st Precinct stationhouse, Officer Ohmeed Davodian threatened § 87(2)(b) with the use of force.	
M.SGT Eric Delman	Abuse: On February 1, 2005, at 1:20 p.m., at § 87(2)(b) and § 87(2)(b) in Brooklyn, Sergeant Eric Delman stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.	
N.SGT Eric Delman	Abuse: On February 1, 2005, at 1:20 p.m., at § 87(2)(b) and § 87(2)(b) in Brooklyn, Sergeant Eric Delman refused to provide his name to § 87(2)(b)	
O.POM Yuriy Posternak	Abuse: On February 1, 2005, at 1:20 p.m., at § 87(2)(b) and § 87(2)(b) in Brooklyn, Officer Yuriy Posternak refused to provide his name to § 87(2)(b)	
P.POM Vincent Schiavarelli	Abuse: On February 1, 2005, at 1:20 p.m., at § 87(2)(b) and § 87(2)(b) in Brooklyn, Officer Vincent Schiavarelli refused to provide his name to § 87(2)(b)	
Q.POM Joel Cummings	Abuse: On February 1, 2005, at 5:40 p.m., at the corner of § 87(2)(b) Avenue and § 87(2)(b) Street in Brooklyn, Officer Joel Cummings stopped the car in which § 87(2)(b) was an occupant.	
R.POM Joel Cummings	Abuse: On February 1, 2005, at 5:40 p.m., at the corner of § 87(2)(b) Avenue and § 87(2)(b) Street in Brooklyn, Officer Joel Cummings threatened to arrest § 87(2)(b)	

## Synopsis

On February 2, 2005, § 87(2)(b) filed a CCRB complaint involving three separate incidents. On January 15, 2005, three Brooklyn South Narcotics officers, identified by investigation as Officer Diana Spangenberg, Officer Ohmeed Davodian, and Detective Saed Rabah, stopped and questioned § 87(2)(b) inside his apartment building, § 87(2)(b) in Brooklyn, on suspicion that he had engaged in a drug transaction (allegations A, B and C). § 87(2)(b) alleged that all three officers approached him with their guns drawn (allegations D, E and F), and that Detective Rabah tackled him to the ground (allegation G). He alleged that unseen officers kicked him, and stepped on his back (allegation H). As a result, § 87(2)(b) sustained back pain, a laceration to the bridge of his nose, and facial abrasions. § 87(2)(b) further alleged that an officer pointed his gun at the back of his head (allegation I). § 87(2)(b), § 87(2)(b)'s wife, claimed that she and some neighbors watched the incident from the door to their apartments until an officer threatened to "shoot somebody" if they didn't step back (allegation J). The officers arrested § 87(2)(b) and escorted him to the lobby, where Officer Davodian allegedly pushed § 87(2)(b) against a wall and told him that if he spits in the building, the officers would beat him (allegation K). § 87(2)(b) alleged that, on the way to the 71<sup>st</sup> Precinct stationhouse, Officer Davodian threatened to murder him if he left any blood in the prisoner van (allegation L). EMTs treated § 87(2)(b) at the stationhouse, and he was also transported to § 87(2)(b) where he was treated for the injuries to his face. § 87(2)(b)'s arrest was not processed nor was he released with a summons.

On February 1, 2005, at approximately 1:20 p.m., § 87(2)(b) was standing outside his car, which had recently been damaged in an accident, in the vicinity of § 87(2)(b) and § 87(2)(b) in Brooklyn. § 87(2)(b) was sitting inside the car and their friend and § 87(2)(b), § 87(2)(b) § 87(2)(b) was about to do some repair work. Sergeant Eric Delman, of the 71<sup>st</sup> Precinct, stopped and questioned § 87(2)(b) about the condition of his car (allegation M). § 87(2)(b) alleged that she asked Sergeant Delman and the two officers he was working with, Officer Yuriy Posternak and Officer Vincent Schiavarelli, for their names, but they did not respond (allegations N, O and P).

Later that same day, at approximately 5:40 p.m., § 87(2)(b) double-parked his car at the corner of § 87(2)(b) Avenue and § 87(2)(b) Street in Brooklyn. Officer Joel Cummings, of the 71<sup>st</sup> Precinct, stopped and questioned § 87(2)(b) (allegation Q) and issued him a summons for blocking vehicle traffic. § 87(2)(b) alleged that Officer Cummings threatened to arrest him if he did not drive away (allegation R).

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

### Summary of Complaint

On § 87(2)(b) at § 87(2)(b), § 87(2)(b) a § 87(2)(b)-old § 87(2)(b) black male, stated to medical personnel at § 87(2)(b) that he was assaulted by police officers. Later that morning, at § 87(2)(b), § 87(2)(b) stated that police officers hit his face with a gun, pushed him to the floor, and stepped on his back. On § 87(2)(b), § 87(2)(b) returned to § 87(2)(b) and stated that he had been “pistol-whipped” in the face and nose and “beaten all over” on January 15, 2005 (Encl. 15a-d).

On § 87(2)(b), § 87(2)(b) filed a notice of claim against the City of New York and the NYPD (Encl. 17a-b). § 87(2)(b) stated that on January 15, 2005, he was treated in a “rude and offensive” manner, violently beaten, denied medical treatment, and unlawfully arrested. § 87(2)(b) further claimed that NYPD officers systematically harassed him in his neighborhood and surrounding areas.

§ 87(2)(b) filed this complaint with the CCRB via telephone on February 2, 2005 (Encl. 16a-c). He provided additional statements to the CCRB in-person on February 28, 2005 (Encl. 19a-e), and via telephone on February 7 (Encl. 18a), March 16 (Encl. 20a), and April 14, 2005 (Encl. 21a). § 87(2)(b)'s civil attorney, § 87(2)(b) § 87(2)(b) was present during the in-person interview but did not make any comments.

On § 87(2)(b), § 87(2)(b) was deposed in a 50H hearing at 26 Court Street in Brooklyn (Encl. 22a-xxx). Also present at the hearing were his attorney, § 87(2)(b) and § 87(2)(b), attorney for the City of New York.

§ 87(2)(b), § 87(2)(g)

#### *First Incident*

§ 87(2)(b) stated that at approximately 8:20 p.m. on January 15, 2005, he walked alone from his apartment at § 87(2)(b) in Brooklyn to a bodega on § 87(2)(b) to play his lottery numbers. § 87(2)(b) who has shoulder-length dreadlocks, was wearing a blue nylon jacket, black corduroy pants, and a black hat with white knitting. § 87(2)(b) was unable to describe his exact route or the exact location of the bodega. On his way there, he did not interact with anyone. At the bodega, § 87(2)(b) bought two packs of cigarettes, lottery tickets, and candy. While at the counter, an unknown black male approached § 87(2)(b) and asked him where he can get some “herbal tea,” to which § 87(2)(b) replied, “I don’t know what you’re talking about.” The entire interaction between the two men lasted one or two seconds, and there was no physical contact between them.

On the way home, § 87(2)(b) walked north on § 87(2)(b) Avenue and turned left onto § 87(2)(b). Meanwhile, the man from the bodega was walking closely behind him. § 87(2)(b) could not recall whether he interacted with anyone while walking home; he denied having physical contact with anyone. When § 87(2)(b) entered his apartment building, the man from the bodega followed him inside. The man remained in the lobby, and § 87(2)(b) walked upstairs to the § 87(2)(b) floor, reached the door to his apartment, and turned around, realizing that he had forgotten something at the bodega. § 87(2)(b) was about to descend the stairs when he saw two plainclothes officers, a Hispanic male and a Hispanic female, with their guns drawn, ascending the stairs. § 87(2)(a) Gen.Mun. §50-H(3) (Encl. 22i)

§ 87(2)(b) did not know these officers’ names, but they were identified by his description of them, and by the officers’ statements, as Officer Diana Spangenberg and Detective Saed Rabah. § 87(2)(b) described the officer identified as Officer Spangenberg as a short, young light-skinned Hispanic female. He described the officer identified by investigation as Officer Rabah as a tall, young, light-skinned Hispanic male. They will hereafter be referred to by their names for clarity. Officer Spangenberg, who had a black gun, led the way up the stairs. Detective Rabah, who had a silver gun, was bouncing a tennis-like ball as he

was coming up the stairs. Behind them, a third officer, identified by investigation as Officer Ohmeed Davodian, followed with his black gun drawn. All of the officers were holding their guns in front of them with both hands, but did not point them at him.

When the officers reached the § 87(2)(b) floor landing, Officer Spangenberg pushed § 87(2)(b) face-first against a wall flush with his apartment door. § 87(2)(b) felt the muzzle of a gun against the back of his head. An unseen officer kicked § 87(2)(b)'s feet out from under him, and he fell to the middle of the hallway, face down. As a result, § 87(2)(b)'s inner nose and mouth began bleeding. An unseen officer kicked § 87(2)(b) in his left leg, and another unseen officer put his foot on § 87(2)(b)'s back. § 87(2)(b) then felt another foot on his back, but he was unable to determine which officers were doing this. Upon feeling pressure on his back, § 87(2)(b) said, "Don't stand on me. I'm disabled." § 87(2)(b) suffers from injury to his cervical spine sustained in 1997.) Either both or one of the officers whose feet were on his back then placed his/their knee into his back. An unseen officer frisked and searched § 87(2)(b). The officer found an unknown amount of Canadian dollars, two American dollars, and the cigarettes, lottery tickets, and candy § 87(2)(b) had purchased. The officers rear-handcuffed § 87(2)(b) and told him to get up. § 87(2)(b) said, "I can't. I'm disabled," so the officers pulled him up by his handcuffed hands.

During his 50H hearing, § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

During his CCRB interview, § 87(2)(b) stated that the officers escorted him to the lobby, where two black male officers were standing with the man from the bodega. § 87(2)(b) did not know these officers' names, but one of the officers was identified by the distinctive shirt he was wearing with a technician's patch labeled "Dwight" as Officer Courtney Adams. § 87(2)(b) described the other black officer as 6'3" tall and "skinny." § 87(2)(g) § 87(2)(b) heard one of the officers say that the man from the bodega was under arrest for trespassing. During his 50H hearing, § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) spat some blood from his mouth, and Officer Davodian pushed § 87(2)(b) against a wall and said, "If you spit in the building, it will be another fucking charge and we'll beat you for that." Meanwhile, neighbors were passing by whom § 87(2)(b) recognized but could not name or indicate which apartment they lived in.

Officer Davodian escorted § 87(2)(b) and the man from the bodega into a prisoner van, which was driven by an unseen officer to the 71<sup>st</sup> Precinct stationhouse. En route, Officer Davodian turned to § 87(2)(b) and said, "If we see any blood in the van, we'll murder you." At the stationhouse, § 87(2)(b) washed his face before his arrest photographs were taken. After § 87(2)(b) requested medical attention, an ambulance responded to the stationhouse. Later, § 87(2)(b) requested to see a doctor again, and he was taken to § 87(2)(b) where he was prescribed painkillers. § 87(2)(b)'s arrest was not processed, and he never came to learn why he was detained; he was released on the evening of January 16, 2005.

### *Second Incident*

§ 87(2)(b) stated that on February 1, 2005, at approximately 1:20 p.m., he was standing on § 87(2)(b) Street between § 87(2)(b) and § 87(2)(b) Streets with his wife, § 87(2)(b) and their friend and § 87(2)(b), § 87(2)(b). § 87(2)(b) was about to inspect § 87(2)(b)'s car, a green Honda Accord (license plate § 87(2)(b)) which had been involved in an accident the day before. A bag of tools was sitting on the roof of the car. The trunk was open so that the rear plates were not visible, and the front bumper had been damaged; the front plates had been removed and there were no front headlights. § 87(2)(b) was standing

near the driver's side door, which was open. § 87(2)(b) was sitting in the front passenger seat. § 87(2)(b) was sitting in the driver's seat with his legs out.

An unmarked beige Crown Victoria pulled up along side the car, and an officer sitting in the front passenger seat whose nameplate read "Deelan" began questioning § 87(2)(b) from inside the car. This officer has been identified by investigation as Sergeant Eric Delman, of the 71<sup>st</sup> Precinct. From inside his car, Sergeant Delman asked § 87(2)(b) if the Honda was his, and requested his driver's license. § 87(2)(b) affirmed that the Honda was his and handed Sergeant Delman his license. Sergeant Delman exited his car, along with two additional officers, identified by investigation Officer Yuriy Posternak and Officer Vincent Schiavarelli. § 87(2)(b) did not know their names.) Officers Posternak and Schiavarelli looked inside the trunk, but did not break the plane of the vehicle. One of them pulled down the hood of the trunk and looked at the rear license plate. During his 50H hearing § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

### *Third Incident*

§ 87(2)(b) stated that later that same day, at approximately 5:40 p.m., he double-parked his car near the corner of § 87(2)(b) Avenue and § 87(2)(b) Street in Brooklyn. Under the impression that double-parking was legal in that area, § 87(2)(b) exited the car to check his lottery numbers at a nearby bodega, and § 87(2)(b) exited to buy food. § 87(2)(b) returned to the car, stood outside, and waited for § 87(2)(b) while she ran home to drop off the food. An officer, whom § 87(2)(b) identified by his nameplate as Officer Joel Cummings of the 71<sup>st</sup> Precinct, approached the car with his partner, whose name § 87(2)(b) did not obtain but who was identified by investigation as Officer Kevin Bischoff. Officer Cummings told two other motorists, whose cars were double-parked nearby, to drive off, and then approached § 87(2)(b) and asked him if the car was his. Officer Cummings informed § 87(2)(b) that he was going to issue him a ticket. § 87(2)(b) argued with Officer Cummings, pointing out that the other two cars had been allowed to leave. Then, an unmarked black Impala pulled over next to § 87(2)(b)'s car; it was occupied by Sergeant Delman and an officer identified by investigation as Officer Mark Zajac. Officer Cummings directed § 87(2)(b) to turn off his car engine and hand his keys and driver's license to him. § 87(2)(b) did so, but continued to argue with Officer Cummings in a "moderate" tone of voice. Approximately twenty to thirty people gathered on the sidewalk to observe what was happening. Officer Cummings then issued § 87(2)(b) summons § 87(2)(a) 160.50

After the officers left, an unidentified civilian approached § 87(2)(b) and said he wrote down everything the officers were doing; § 87(2)(b) did not obtain this person's identity or contact information.

§ 87(2)(b) directed the undersigned investigator to address all correspondence through his attorney, § 87(2)(b). The undersigned attempted to contact § 87(2)(b) numerous times via telephone and mail in an attempt to schedule a photo series viewing, however, § 87(2)(b) failed to respond. § 87(2)(g), § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) He refused to provide contact information for § 87(2)(b) § 87(2)(b) During his 50H hearing § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b) When the investigator informed § 87(2)(b) that § 87(2)(b) required him to sign a second medical release form, he was unwilling to do so. § 87(2)(g), § 87(2)(b)

## Results of Investigation

§ 87(2)(b) filed a notice of claim against the City of New York and the NYPD on § 87(2)(b). She claimed that NYPD officers “systematically” harassed her in her neighborhood and surrounding areas. § 87(2)(g)

§ 87(2)(b) provided statements to the CCRB via telephone on February 7, 2005 (Encl. 24a) and in-person on February 28, 2005 (Encl. 25a-e). § 87(2)(g)

### *First Incident*

During her initial telephone statement, § 87(2)(b) stated that she was inside her apartment on January 15, 2005 when § 87(2)(b) went to the bodega. She stated that she did not witness what happened in the hallway outside her door, but heard a commotion and heard a male voice say, “Shut the fuck up or we’ll shoot somebody.” § 87(2)(b) stated that she remained inside during the entire incident, but that § 87(2)(b) relayed to her everything that happened.

During her in-person statement, however, § 87(2)(b) stated that about twenty minutes after § 87(2)(b) left for the bodega, she heard a commotion. § 87(2)(b) heard a woman’s voice, and opened her apartment door. She saw § 87(2)(b) lying facedown on the floor. Two white male officers were standing on either side of § 87(2)(b) and another white male officer and a Hispanic female officer were standing to the right of the apartment door. § 87(2)(b), § 87(2)(g)

The two male officers closest to § 87(2)(b) each had a knee pressed into his back. They were holding § 87(2)(b)’s hands behind his back while searching his pockets. § 87(2)(b) yelled, “He had back surgery. Get off his back!” but the officers did not respond. Neighbors on the same floor, including the son and nephew (names unknown) of her neighbor, § 87(2)(b) had stepped into the hallway and were asking what was happening. The male officer standing to the right of § 87(2)(b)’s door said, “Shut the fuck up before we shoot somebody!” At that point, § 87(2)(b) closed her door, but not entirely, so that she could see through a small gap. § 87(2)(b) witnessed the rest of the incident alternately from the peephole and the crack in the door.

One of the officers closest to § 87(2)(b) told him to get up, but he didn’t respond. The same officer kicked § 87(2)(b) in the foot and told him again to get up. § 87(2)(b) replied, “I can’t,” so this officer pulled him up by the handcuffs. After the officers escorted § 87(2)(b) downstairs, § 87(2)(b) saw blood “all over” the hallway floor and on the wall. § 87(2)(b) saw that her husband had blood on his face, coming out of his nose, and on his neck. She saw a cut across the bridge of his nose. In addition, § 87(2)(b) was coughing “like he had to spit.”

### *Second Incident*

§ 87(2)(b), § 87(2)(g) recalled that after Sergeant Delman requested § 87(2)(b)’s driver’s license, § 87(2)(b) then exited the car to write down the patrol car’s license plates. She had a pen and a piece of paper in her hands. After she exited, the officers quickly walked back to their car to leave. As they were entering their car, § 87(2)(b) asked the officers for their names by directing the general request, “I want your names,” but they drove off without responding.

### *Third Incident*

§ 87(2)(b), § 87(2)(g) stated that after she left her husband by their car, she ran home. While home, her husband called her on the phone and told her to come back quickly. § 87(2)(b) ran back to their car and saw Sergeant Delman, Officer Zajac, Officer Cummings, and Officer Bischoff standing near the § 87(2)(b) car. § 87(2)(b) recorded all of the officers’ names and the license plate of the nearby black Impala § 87(2)(e), § 87(2)(b). The § 87(2)(b) car was off, and Officer Cummings was holding § 87(2)(b)’s keys and driver’s license while writing a summons. Sergeant Delman commented, “It’s your second time today,”

and pointed out to § 87(2)(b) that there were no headlights on the car. § 87(2)(b) argued that it was still light outside. § 87(2)(b) who had called 311 to complain, asked the officers what was happening, but they did not respond. § 87(2)(b) in a moderate tone of voice, said, "This is harassment! Why did you tell the other cars to leave? Why did you take my keys?" § 87(2)(b) added, "It's against the law to take his keys." Before the officers left, Officer Cummings said, "We're the police," handed § 87(2)(b) the summons and said, "Drive before I arrest you."

#### **Attempts to Contact Other Witnesses**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)] Detective Robert Brown, of Brooklyn South Narcotics, arrested § 87(2)(b) § 87(2)(b) at the corner of § 87(2)(b) Street and § 87(2)(b) Avenue at 7:50 p.m. on January 15, 2005. The undersigned sent § 87(2)(b) a letter to the address listed on the arrest report, but it was returned as undeliverable because it lacked an apartment number. Searches of the COLE, Metrosearch, and 411 databases yielded no results for § 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]. The 71<sup>st</sup> Precinct command log contained the only other record of potential witnesses, namely § 87(2)(b) § 87(2)(b) who was arrested inside § 87(2)(b) at the same time § 87(2)(b) was arrested. The address relating to § 87(2)(b) on the command log is invalid. Searched of available databases, including BADS, DMV, and 411 yielded no results for § 87(2)(b) contact information.

Several attempts were made to speak to all members of the § 87(2)(b) household (the § 87(2)(b) neighbors) regarding their involvement in this incident, § 87(2)(g). Neither the mother, § 87(2)(b) § 87(2)(b) nor the daughter, § 87(2)(b) § 87(2)(b) witnessed the incident. The others failed to return phone calls and letters. According to Metrosearch and COLE, § 87(2)(b) has 58 apartments. The only apartments listed on the § 87(2)(b) floor are the § 87(2)(b) s and the § 87(2)(b) § 87(2)(g).

As noted above, § 87(2)(b) refused to provide contact information for § 87(2)(b) § 87(2)(b).

#### *Officer Statements Regarding the First Incident*

##### **Officer Diana Spangenberg (Subject Officer)**

Officer Diana Spangenberg, currently of Narcotics Borough Bronx, was interviewed at the CCRB on August 3, 2005 (Encl. 42a-b). Officer Spangenberg, who was assigned to Brooklyn South Narcotics at the time of the incident, stated that on January 15, 2005, she worked in plainclothes from 2:33 p.m. to 11:00 p.m., assigned to a buy and bust operation. She was working in the lead auto, an unmarked silver Dodge, with Sergeant Louis Balsamo, Detective Saed Rabah, and Detective Robert Brown. Officer Spangenberg noted that, although the tactical plan does not place her in the lead auto, she noted in her DAR that she was assigned to it. Officer Courtney Adams was working alone in the chase car.

Officer Spangenberg stated that at approximately 8:20 p.m., the lead auto was driving on § 87(2)(b) in the vicinity of § 87(2)(b) § 87(2)(e).

Her car was approximately ten feet away from the males, who were walking side by side but not engaging in physical contact.

After the males entered, Officer Spangenberg, Detective Rabah, and Officer Davodian entered the building. Detective Rabah informed Officer Spangenberg that he was going up the stairs, and she ran up seconds after him, losing sight of Officer Davodian. Officer Spangenberg, who carries a silver and black Smith and Wesson, stated that she did not draw her gun, nor did she witness Detective Rabah or Officer Davodian with their guns drawn. By the time Officer Spangenberg reached one of the landings, the suspect with dreadlocks, identified by investigation as § 87(2)(b) was lying facedown on the floor. Aside from § 87(2)(b) § 87(2)(b) and the officers, the hallway was empty. Officer Spangenberg did not witness how § 87(2)(b) arrived on the floor. Detective Rabah was positioned to § 87(2)(b) s side, pulling his hands behind his back. § 87(2)(b) was not resisting in any way. Officer Spangenberg grabbed one of § 87(2)(b) s hands



and together she and Detective Rabah handcuffed him. Officer Davodian approached from behind and assisted Detective Rabah in standing § 87(2)(b) up by lifting him up by his shoulders.

Officer Spangenberg stated that she did not push § 87(2)(b) against a wall or witness any officer do so. No officer placed his foot or knee into § 87(2)(b)'s back or kicked § 87(2)(b). Officer Spangenberg stated that she had no indication that § 87(2)(b) was handicapped. No civilians entered the hallway while the officers were there. Officer Spangenberg did not hear any officer say, "Shut the fuck up before we shoot somebody." No officer frisked or searched § 87(2)(b) while they were in the hallway.

Officer Spangenberg stated that she did not observe any injuries or blood on § 87(2)(b). The undersigned investigator noted that the 71<sup>st</sup> Precinct command log notes that § 87(2)(b) had "pain in his nose," and that EMS treated and released him, but this information did not refresh Officer Spangenberg's memory regarding any injuries. Officer Spangenberg did not hear § 87(2)(b) complain of injuries.

The three officers escorted § 87(2)(b) to the lobby, where they met up with the rest of the field team, including Sergeant Louis Balsamo, Officer Courtney Adams, and Detective Andrew Marage. The other male with the backpack was under arrest in the lobby, but Officer Spangenberg was unaware of the circumstances of his arrest. No civilians passed through the lobby while they were there. Officer Spangenberg did not see § 87(2)(b) spit anywhere in the lobby. She did not see any officer push § 87(2)(b) against a wall or hear any officer say, "If you spit in the building it will be another fucking charge and we'll beat you for that." Officer Spangenberg did not enter the prisoner van at any point. Officer Spangenberg could not recall whether narcotics were recovered from the males, or whether their arrests were processed.

#### **Detective Saed Rabah (Subject Officer)**

Detective Saed Rabah, of Brooklyn South Narcotics, was interviewed at the CCRB on August 10, 2005 (Encl. 44a-b). Detective Rabah stated that on January 15, 2005, he worked in plainclothes from 2:45 p.m. to 11:00 p.m., assigned to a buy and bust operation. Detective Rabah recalled that he was assigned to the lead auto with Sergeant Balsamo, Detective Brown, and Officer Spangenberg; he could not recall whether Officer Adams was with them. § 87(2)(g)

§ 87(2)(e)

§ 87(2)(e) Detective Rabah, who could not independently recall the description of the suspects, did not see either of the suspects outside the building before entering. Upon entering the building, Detective Rabah went up the stairs to perform a vertical patrol of the building when he encountered one of the males (he could not recall where) § 87(2)(e)

Detective Rabah recalled that this male did not have dreadlocks. Detective Rabah had a brief conversation with this male (he could not recall the details of the conversation) before he saw a man with dreadlocks who resembled the other suspect. This male, identified by investigation as § 87(2)(b) was walking down the stairs. Detective Rabah stated that he did not see § 87(2)(b) interacting with the other suspect at any point.

When he saw § 87(2)(b) Detective Rabah, whose shield was visible, said, "Police, don't move." § 87(2)(b) made eye contact with Detective Rabah and ran up the stairs. Detective Rabah chased § 87(2)(b) up an unknown number of flights of stairs, with Officer Spangenberg following behind. Detective Rabah, who carries a predominately silver Smith and Weston firearm, could not recall whether he drew his gun. Detective Rabah caught up to § 87(2)(b) in a hallway. § 87(2)(b) turned to face Detective Rabah, who attempted to grab § 87(2)(b)'s arms to place handcuffs on him. § 87(2)(b) however, flailed his arms. Detective Rabah grabbed § 87(2)(b) in a bear hug, and both men fell to the ground in the struggle. Detective Rabah stated that he did not push § 87(2)(b) against the wall before they fell, or kick § 87(2)(b)'s feet out from under him. He did not point his gun at § 87(2)(b)'s head. § 87(2)(b) struck the ground facedown, causing an injury to his nose. Detective Rabah later saw blood around § 87(2)(b)'s nose, but he could not recall whether it was an exterior or interior injury. Once on the floor, § 87(2)(b) continued to resist Detective Rabah's attempts to pull his arms behind his back. Officers Davodian and Spangenberg arrived around that time, though Detective Rabah could not recall which officer arrived first.

Detective Rabah stated that neither he nor Officers Spangenberg or Detective Rabah used additional physical force against § 87(2)(b) such as kicking him or placing their feet into his back.

Detective Rabah did not observe Officers Spangenberg or Davodian with their guns drawn. Detective Rabah did not frisk or search § 87(2)(b) at any time. He recalled that Detective Brown frisked and searched § 87(2)(b) but he could not recall where or when.

§ 87(2)(b), § 87(2)(g)

Detective Rabah recalled that when they returned to the lobby, the first male he encountered was there, under arrest. § 87(2)(e)

§ 87(2)(b) Detective Rabah stated that both males were arrested § 87(2)(a) 160.50 § 87(2)(b); he believed § 87(2)(b) was also charged § 87(2)(a) 160.50. Detective Rabah could not recall whether § 87(2)(b) was later released without charges.

Detective Rabah stated that while on duty he habitually carries a bouncing ball, a trinket his daughter gave him. He could not specifically recall whether he was bouncing it during this incident.

#### **Officer Ohmeed Davodian (Subject Officer)**

Officer Ohmeed Davodian, of Brooklyn South Narcotics, was interviewed at the CCRB on July 28, 2005. Officer Davodian stated that he worked in plainclothes from 2:33 p.m. on January 15, 2005 to 1 a.m. on January 16, 2005, assigned to the prisoner van with Detective Andrew Marage. § 87(2)(g)

Officer Davodian was unaware of the conditions of § 87(2)(b)'s arrest. § 87(2)(b), § 87(2)(e)

§ 87(2)(b) Upon entering the lobby of § 87(2)(b) Officer Davodian heard Detective Rabah from upstairs giving commands like, "Police, don't move." Officer Davodian ran to the § 87(2)(b) floor to find Detective Rabah and Officer Diana Spangenberg struggling to handcuff § 87(2)(b) who was on the floor. He had not seen Detective Rabah or Officer Spangenberg go up the stairs; he did not know how long they had been there before he arrived. He did not see them draw their guns. Officer Davodian did not draw his gun, which is a black and silver Smith and Weston 9 mm. He assisted the other officers by grabbing one of § 87(2)(b)'s arms. Officer Davodian frisked § 87(2)(b) while he was on the ground, but did not search him at that point. No officer said, "Shut the fuck up before we shoot somebody."

In the lobby, an unknown officer searched § 87(2)(b). Officer Davodian couldn't recall whether any narcotics were recovered. He couldn't recall which officers were in the lobby at that time, or whether there were any civilians in the lobby. Officer Davodian observed that § 87(2)(b) was bleeding from his nose, but he did not know how § 87(2)(b) received the injury. Officer Davodian did not observe § 87(2)(b) spit. He recalled that § 87(2)(b) complained of injuries, but he was unable to recall the details of his complaints. One of the officers requested an ambulance for § 87(2)(b). Neither he nor any other officer pushed § 87(2)(b) against a wall or said, "If you spit in the building it'll be another fucking charge and we'll beat you for that." Officer Davodian recalled that another person was apprehended in the vicinity of § 87(2)(b) at around the same time, but he was unable to say who apprehended the individual, what the conditions of the arrest were, or whether he was apprehended in connection with § 87(2)(b)'s arrest.

Officer Davodian and Detective Marage, with no other officers, drove § 87(2)(b) to the stationhouse in the prisoner van. Officer Davodian denied saying, "If we see any blood in the van we'll murder you." § 87(2)(b) was treated by EMS at the stationhouse, but refused medical attention. Officer Davodian stated that he believed § 87(2)(b) was charged § 87(2)(a) 160.50 and his arrest was processed, but he was unable to say what he was charged with. Detective Robert Brown processed § 87(2)(b)'s arrest.

**Detective Andrew Marage (Witness Officer)**

Detective Andrew Marage was interviewed at the CCRB on July 5, 2005 (Encl. 38a-b). Detective Marage stated that on January 15, 2005, he worked in plainclothes from 2:45 p.m. to 11:00 p.m., assigned to the prisoner van with Officer Davodian.

Detective Marage had no independent recollection of this incident. He said that, as he was driving the van, it was his responsibility to remain in the van until a prisoner needed to be picked up. Detective Marage did not recall any prisoner entering the van with a bloody nose and spitting. The investigator described the basic outline of the incident based on civilian and officer statements, and showed a photograph of § 87(2)(b) but Detective Marage still did not recall the incident.

**Officer Courtney Adams (Witness Officer)**

Sergeant Courtney Adams, who at the time of this incident was an officer assigned to Brooklyn South Narcotics, was interviewed at the CCRB on August 16, 2005 (Encl. 46a-b). At the time of his interview, Sergeant Adams was assigned to the 88<sup>th</sup> Precinct. He stated that on January 15, 2005, he worked in plainclothes from 3 p.m. to 11 p.m. He was assigned to the chase car with Officer Spangenberg.

Sergeant Adams had no independent recollection of the incident under investigation. He acknowledged that he wears a shirt with a technician's patch that says "Dwight." The investigator described the basic outline of the incident based on civilian and officer statements, and showed a photograph of § 87(2)(b) but Sergeant Adams still did not recall the incident.

**Sergeant Louis Balsamo (Witness Officer)**

Sergeant Luis Balsamo, of Brooklyn South Narcotics, was interviewed at the CCRB on July 18, 2005 (Encl. 40a-b). Sergeant Balsamo stated that on January 15, 2005, he worked from 1:55 p.m. to 11:30 p.m., assigned as the supervisor of a buy and bust operation. Sergeant Balsamo was assigned to a silver Dodge Caravan with Detectives Brown and Rabah.

Like Detective Marage and Officer Adams, Sergeant Balsamo had no recollection of the incident under investigation.

*Officer Statements Regarding the Second Incident***Sergeant Eric Delman (Subject Officer)**

Sergeant Eric Delman, of the 71<sup>st</sup> Precinct, was interviewed at the CCRB on April 25, 2005 (Encl. 27a-b). Sergeant Delman stated that on February 1, 2005, he worked two tours. During his first tour, from 6:55 a.m. to 3:52 p.m., he worked in uniform as conditions supervisor. He worked with Officer Yuriy Posternak and Officer Vincent Schiavarelli in an unmarked gray Crown Victoria. During his overtime tour, from 4:00 p.m. to 12:57 a.m., Sergeant Delman worked alone and in uniform, assigned as the impact supervisor. He was driving a black Impala. Sergeant Delman had entries in his memo book regarding his stop of § 87(2)(b) at 1:10 p.m. on § 87(2)(b) Street between § 87(2)(b) and § 87(2)(b) Streets (Encl. 26a-c) § 87(2)(g)

*Second Incident*

Sergeant Delman stated that at approximately 1:10 p.m., Officer Posternak, the operator of their vehicle, was driving on § 87(2)(b) Street between § 87(2)(b) and § 87(2)(b) Streets when Sergeant Delman observed a male, identified by investigation as § 87(2)(b) doing repair work on his car. A female, § 87(2)(b) was also present, possibly standing on the sidewalk. There were one or two other people there, but Sergeant Delman could not recall where they were in relation to the car. Sergeant Delman noticed that the rear hatch of the car was lifted, there was oil on the street, and there was no front plate on the vehicle. The vehicle, however, did not appear to be damaged. Sergeant Delman stated that he could have issued § 87(2)(b) an ECB summons because of the oil leaking from his car onto the street. He also could have issued § 87(2)(b) a VTL summons for repairing his vehicle in the street.

Sergeant Delman asked § 87(2)(b) whether the vehicle belonged to him, but § 87(2)(b) immediately became "hostile," and asked why Sergeant Delman was questioning him. Either § 87(2)(b) or § 87(2)(b) said

loudly, “I’ll see you at 40 Rector!” Someone (Sergeant Delman could not recall whether it was an officer or a civilian) lowered the rear hatch in order to determine whether the car had a license plate. Sergeant Delman stated that he was trying to briefly determine if the car had plates, but “it wasn’t worth the headache.” He stated that before the situation escalated more, he used his discretion and left the scene without issuing a summons. He could not recall if he or any officer requested § 87(2)(b)’s identification. Sergeant Delman further stated that at some point one of the civilians (he could not recall whom) asked him for his name and shield number, and Sergeant Delman verbally provided the information.

#### *Third Incident*

Sergeant Delman stated that at approximately 5:40 p.m. on the same day, he was patrolling the vicinity of § 87(2)(b) Avenue and § 87(2)(b) Street when he picked up Officer Mark Zajac, who was at a footpost. As he was driving, Sergeant Delman saw two officers, identified by investigation as Officer Joel Cummings and Officer Kevin Bischoff, issuing a summons to § 87(2)(b). Sergeant Delman could not recall the conditions of the stop. He pulled over to ensure that the officers were safe, but he could not recall whether he exited his vehicle. He may have informed the officers that he had seen § 87(2)(b) earlier. § 87(2)(b) appeared to be upset, but Sergeant Delman was unable to recall what he was doing or saying. Sergeant Delman stated that a lot of people were passing by that day, but he could not recall if a crowd gathered. Sergeant Delman could not recall whether Officer Cummings took the § 87(2)(b)’s keys, or whether Officer Cummings said, “Drive before I arrest you.”

#### **Officer Vincent Schiavarelli (Subject Officer)**

Officer Vincent Schiavarelli, formerly of the 71<sup>st</sup> Precinct, was interviewed at the CCRB on February 8, 2006 (Encl. 48a-b). Officer Schiavarelli, who is currently assigned to the Brooklyn South Warrant Squad, stated that on February 1, 2005, he worked from 7:00 a.m. to 3:35 p.m., assigned to the 71<sup>st</sup> Precinct Conditions unit. He was working with Sergeant Delman and Officer Posternak in RMP § 87(2)(b), an unmarked black Impala. Officer Schiavarelli did not have any entries in his memo book regarding this incident (Encl. 47a-c). He had no recollection of this incident.

#### **Officer Yuriy Posternak (Subject Officer)**

Officer Yuriy Posternak, of the 71<sup>st</sup> Precinct, was interviewed at the CCRB on February 27, 2006 (Encl. 50a-b). Officer Posternak stated that on February 1, 2005 he worked from 7:00 a.m. to 3:35 p.m., assigned to the 71<sup>st</sup> Precinct Conditions unit with Sergeant Delman and Officer Schiavarelli. Officer Posternak did not have any entries in his memo book regarding this incident (Encl. 49a-c). He had no recollection of this incident.

#### *Officer Statements Regarding the Third Incident*

#### **Officer Joel Cummings (Subject Officer)**

Officer Joel Cummings was interviewed at the CCRB on May 2, 2005 (Encl. 32a-b). Officer Cummings stated that on February 1, 2005, he worked two tours. During his 8:00 a.m. to 4:00 p.m. tour, he was at court, and during his 4 p.m. to 12:35 a.m. tour, he was assigned to a footpost in an impact zone. He was working alone and in uniform.

Officer Cummings stated that at approximately 5:40 p.m., he was writing a summons (Encl. 30a) for a double-parked car at the corner of § 87(2)(b) Avenue and § 87(2)(b) Street when the owner of the car, § 87(2)(b), approached him. After Officer Cummings explained why he was writing the summons, § 87(2)(b) became “displeased” and “very nasty,” and started cursing and being “verbally abusive.” Officer Cummings could not recall exactly what § 87(2)(b) said, or whether he felt like § 87(2)(b) was a threat to him. He stated that for safety reasons, an officer may take a driver’s keys if he feels threatened, but Officer Cummings could not specifically recall whether he took § 87(2)(b)’s keys. Officer Cummings could not recall whether the car was on or off at the time, or whether the car had any damage to it. He stated that a crowd did not gather, but that there were a lot of people walking around, as that corner is a busy commercial area.

Officer Cummings acknowledged that other officers arrived at the scene, but he could not recall whether Sergeant Delman communicated that he had seen § 87(2)(b) earlier. At some point, a female, identified

by investigation as § 87(2)(b) approached the car and became “loud” and “verbally abusive,” but Officer Cummings could not recall the details of what she said. Officer Cummings could not recall whether § 87(2)(b) did not immediately move his vehicle. Officer Cummings stated that he did not say, “Drive before I arrest you.”

**Officer Kevin Bischoff (Witness Officer)**

Officer Kevin Bischoff, of the 71<sup>st</sup> Precinct, was interviewed at the CCRB on May 23, 2005 (Encl. 34a-b). Officer Bischoff stated that on February 1, 2005 he worked alone and in uniform from 4 p.m. to 12:35 a.m., assigned to footpost 4. § 87(2)(g)

Officer Bischoff stated that, prior to writing the summons, Officer Cummings asked § 87(2)(b) to move the vehicle, and § 87(2)(b) said he’d move it in a minute. The officers then walked across the street and waited for § 87(2)(b) to move the vehicle. After about two minutes, § 87(2)(b) had not moved his car, so Officer Cummings approached the vehicle to begin writing the summons. § 87(2)(b) approached the vehicle and proceeded to scream, yell, curse, and gesture with his arms. He approached Officer Cummings until he was “in his face” and “right on top of him” and said things like, “What the fuck? Why are you harassing me? Why are you writing me a summons? I told you I was going to move it. Leave me the fuck alone. What the fuck? Fuck you.” § 87(2)(b) continued screaming and yelling while a crowd of ten to fifteen people began to gather on the street. § 87(2)(b) was addressing the crowd, saying things like, “Yo, you believe this? You see this?” At that point, Officer Cummings informed § 87(2)(b) that if he did not calm down, he would be arrested for “causing a scene.” § 87(2)(b) then calmed down.

Officer Bischoff recalled that at some point § 87(2)(b) approached the scene, demanded to know what the officers were doing, and placed a phone call. Officer Bischoff did not know who she called, but she stated something like, “These cops are harassing me and my husband. I want to make a complaint.” § 87(2)(b) then started writing down the officers’ names and shield numbers. She asked Officer Bischoff for his name, and he stated his name and shield number. Officer Bischoff stated that § 87(2)(b) “might have” asked Officers Cummings and Zajac for their names. Officer Bischoff could not recall whether Officer Cummings said to § 87(2)(b) “Drive before I arrest you.”

**Officer Mark Zajac (Witness Officer)**

Officer Mark Zajac was interviewed at the CCRB on April 19, 2005 (Encl. 29a-b). Officer Zajac stated that on February 1, 2005, he worked in plainclothes from 7:05 a.m. to 3:40 p.m., assigned to a burglary apprehension team. He also worked overtime that day, from 4 p.m. to 12:35 a.m., assigned to a precinct impact zone. He worked alone, in uniform, and on foot.

§ 87(2)(g) Officer Zajac did not hear Officer Cummings say, “Drive before I arrest you.”

**Note regarding additional officer statements**

Detective Robert Brown, who was working with the narcotics team on January 15, 2005, was on long-term sick leave for the duration of this investigation and thus was not interviewed in relation to the incident.

**Medical Records**

The ACR related to § 87(2)(b)’s treatment by EMS at the stationhouse on § 87(2)(b) was unavailable to this investigation; the FDNY Legal Department found no record of any ACR related to the incident (Encl. 51a-b).

§ 87(2)(b) medical records (Encl. 52a-m) dated § 87(2)(b) indicate that § 87(2)(b) complained of pain to his face and back caused by a “direct blow.” He sustained tenderness on his lower right back, swelling above his right eyebrow, and an abrasion on the bridge of his nose and on his right temple. § 87(2)(b) informed medical personnel that he has a history of upper spine surgery. He was prescribed Tylenol and released in stable condition.

§ 87(2)(b) medical records dated § 87(2)(b) note that § 87(2)(b) complained of pain to his face neck, cheek, and mid, upper and lower back as a result of an assault three days prior. He also complained of nausea and headache. § 87(2)(b) stated that he was “pistol-whipped in [the] face [and] nose” and “beaten all over.” Under the category titled “context of assault” it is noted that “fists” and “kicks” were used, but not “pushed/thrown down” or “pushed/thrown against a wall.” § 87(2)(b) sustained a small laceration to the bridge of his nose, which was healing. He was prescribed Sudafed and Motrin.

On § 87(2)(b), § 87(2)(b), a private doctor, took radiographic photographs of § 87(2)(b)'s skull and spine. Examination determined that § 87(2)(b) sustained no notable spinal fracture. The nasal arch was intact with no separation or displacement (Encl. 53a-h).

On § 87(2)(b), § 87(2)(b) went to § 87(2)(b) for a post-trauma checkup. It was noted that § 87(2)(b) did not suffer from acute facial trauma (Encl. 54a-c).

### **Communications Records**

A request to the CCRB Monitoring and Analysis System yielded negative results for any Sprints related to the January 15, 2005 incident and the February 1, 2005 incident at 1:20 p.m. Sprint # § 87(2)(b) notes that the 71<sup>st</sup> Precinct footpost 3 stopped one male at 6:16 p.m. on February 1, 2005 in the vicinity of § 87(2)(b) Street and § 87(2)(b) Avenue (Encl. 59a).

### **Police Documents**

The 71<sup>st</sup> Precinct command log (Encl. 57a) has three arrest entries made by Detective Robert Brown at 9:30 p.m. on January 15, 2005, related to the arrests of § 87(2)(b) § 87(2)(b) § 87(2)(b) and § 87(2)(b). § 87(2)(b) a § 87(2)(b)-old Hispanic female, was arrested at the corner of § 87(2)(b) Street and § 87(2)(b) Avenue; the time of arrest is not noted. § 87(2)(b) and § 87(2)(b) were arrested inside § 87(2)(b). It is not noted whether § 87(2)(b) was later released. § 87(2)(b) had “pain in his nose.” EMS treated and released him at the stationhouse.

A BADS search of all arrests made in the 71<sup>st</sup> Precinct on January 15, 2005 revealed that Detective Brown processed § 87(2)(b) arrest; there is no record of § 87(2)(b)'s or § 87(2)(b) arrests (Encl. 55a).

The 71<sup>st</sup> Precinct Stop, Question and Frisk log for January 15, 2005 and February 1, 2005 has no entries related to any stops of § 87(2)(b). The 71<sup>st</sup> Precinct refused to provide documentation related to § 87(2)(b)'s arrest because it was sealed.

### **Criminal Court Records**

§ 87(2)(b) [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

### **Summons Records**

According to § 87(2)(b) of the Citywide Summons Operations Office, as of January 13, 2006, there is no public record of § 87(2)(b)'s traffic summons issued by Officer Cummings.

### **Civil Case Documents**

As noted above, § 87(2)(b) and § 87(2)(b) filed a notice of claim against the City of New York in relation to these incidents for an unknown sum of money. § 87(2)(b) claimed physical and psychological injury as a result of false arrest, and battery and excessive use of force on January 15, 2005. § 87(2)(b) and § 87(2)(b) claimed mental, emotional and psychological injury as a result of intentional infliction of mental duress, negligence, and systematical harassment by members of the NYPD.

### **Complainant/Officer CCRB History**

This is § 87(2)(b)'s first CCRB complaint (Encl. 14a). In their respective 4-year, 11-year and 5-year tenures, neither Officer Spangenberg, Detective Rabah nor Officer Davodian has any substantiated CCRB allegations on record (Encl. 7a-9a). In their respective 7-year, 2-year and 2-year tenures, neither Sergeant Delman, Officer Posternak nor Officer Schiavarelli has any substantiated CCRB allegations on record (Encl. 10a-12a). In his 8-year tenure, Officer Cummings has one substantiated CCRB allegation (Encl.

13a). In case 200403507, the Board substantiated an allegation of physical force. The NYPD disposition and penalty are pending.

### **Conclusions and Recommendations**

#### **Officer Identification**

§ 87(2)(b) stated that three officers—two males and one female—stopped him outside his apartment on January 15, 2005. On the other hand, according Detective Rabah, Officer Davodian, and Officer Spangenberg, Detective Rabah was the first to stop him. § 87(2)(b), § 87(2)(g)

Officer Spangenberg was identified as the only female officer to stop § 87(2)(b) § 87(2)(g)

Sergeant Delman was identified by his nameplate, and he admitted to stopping § 87(2)(b) at 1:20 p.m. on February 1, 2005. § 87(2)(g)

Officers Posternak and Schiavarelli admitted to working with Sergeant Delman at that time; § 87(2)(b), § 87(2)(g)

#### **Issues in Dispute**

§ 87(2)(b), § 87(2)(g)

Detective Rabah claimed that § 87(2)(b) fled, but § 87(2)(b) described a scenario where he was arrested right outside of his apartment door, without having fled. § 87(2)(g)

§ 87(2)(b) alleged that an officer kicked his leg and more than one officer placed their feet into his back, but none of the officers admitted to doing those things. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

#### **Credibility**

§ 87(2)(b), § 87(2)(g)

He stated in his notice of claim that he was denied medical treatment, but the command log and § 87(2)(b)'s statement point to the fact that he received medical treatment twice while in police custody. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

He claimed that at the

precise moment he forgot something at the bodega and turned around, an officer arrived outside his apartment and tackled him to the ground. § 87(2)(b), § 87(2)(g)

§ 87(2)(g)

She initially claimed that she did not witness what happened (but that her husband told her everything) and she later claimed that she witnessed most of what happened. § 87(2)(b), § 87(2)(g)

She said that § 87(2)(b) was coughing “like he had to spit” and that the officers told people in the hallway to “shut the fuck up” or they would shoot someone. § 87(2)(b), § 87(2)(g)

§ 87(2)(a) Gen.Mun. §50-H(3)

Also, § 87(2)(b) never mentioned that Officer Cummings, during the third incident, told him, “Drive before I arrest you.”

Officers Davodian and Spangenberg and Detective Rabah § 87(2)(g)

all stated that there were no other civilians in the hallway and the lobby when they apprehended § 87(2)(b). None of them specifically recalled that § 87(2)(b) was spitting.

§ 87(2)(b), § 87(2)(g)

Also, Detective Rabah claimed that Officer Spangenberg was following him closely. § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

#### Note on allegations not pleaded

§ 87(2)(b), § 87(2)(g)

**Allegation A) Abuse of Authority:** On January 15, 2005, at § 87(2)(b) in Brooklyn, Officer Diana Spangenberg stopped and questioned § 87(2)(b)

**Allegation B) Abuse of Authority:** On January 15, 2005, at § 87(2)(b) in Brooklyn, Detective Saed Rabah stopped and questioned § 87(2)(b)

**Allegation C) Abuse of Authority:** On January 15, 2005, at § 87(2)(b) in Brooklyn, Officer Ohmeed Davodian stopped and questioned § 87(2)(b)

§ 87(2)(e)

§ 87(2)(b), § 87(2)(g)

. An unknown male



asked him a question suggesting that he wanted to purchase marijuana, or “herbal tea,” and then closely followed § 87(2)(b) on a precise route several city blocks into his apartment building. § 87(2)(b), § 87(2)(g)

**Allegation D) Abuse of Authority:** On January 15, 2005, at § 87(2)(b) in Brooklyn, Officer Diana Spangenberg drew her gun.

**Allegation E) Abuse of Authority:** On January 15, 2005, at § 87(2)(b) in Brooklyn, Detective Saed Rabah drew his gun.

**Allegation F) Abuse of Authority:** On January 15, 2005, at § 87(2)(b) in Brooklyn, Officer Ohmeed Davodian drew his gun.

§ 87(2)(b) alleged that all three officers who stopped him came up the stairs with their guns drawn. OATH case *PD v. Gliner* (2000) notes that the NYPD department policy is that “an officer can draw his firearm and point it at another person so long as he has a reasonable fear for his own or another’s personal safety” (Encl. 2a-c). With the exception of Detective Rabah, who could not recall whether he drew his gun, all three officers claimed that they did not draw their guns or observe their partners with their guns drawn.

§ 87(2)(b), § 87(2)(g), § 87(2)(b) recalled that Detective Rabah has a silver gun, but Officers Spangenberg and Davodian have black guns (their guns are black and silver). § 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g) He claimed to have forgotten something at the bodega, and then turned around and saw three officers coming up the stairs. § 87(2)(b), § 87(2)(g)

**Allegation G) Force:** On January 15, 2005, at § 87(2)(b) in Brooklyn, Detective Saed Rabah used physical force against § 87(2)(b)

§ 87(2)(b) alleged that an unseen officer kicked his feet out from under him, and he fell down face-forward, causing his inner nose and mouth to bleed. § 87(2)(b), § 87(2)(g)

Patrol Guide Procedure 203-11, governing the use of force, states that officers are permitted to use “only the amount of force necessary to overcome resistance” to effect an arrest (Encl. 4a). § 87(2)(b), § 87(2)(g)

**Allegation H) Force:** On January 15, 2005, at § 87(2)(b) in Brooklyn, officers used physical force against § 87(2)(b)

**Allegation I) Force:** On January 15, 2005, at § 87(2)(b) in Brooklyn, an officer pointed his gun at § 87(2)(b)

§ 87(2)(b) alleged that an unseen officer kicked his left leg, and other unseen officers placed their feet on his back. § 87(2)(b) also alleged, to hospital personnel and to the CCRB, that an officer pointed his gun at the back of his head. He was unable to determine which officers were doing this. Both Officer Spangenberg and Officer Davodian stated that they did not even draw their guns. Detective Rabah could not recall whether he drew his gun, but he stated that he did not point his gun at § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation J) Abuse of Authority:** On January 15, 2005, at § 87(2)(b) in Brooklyn, an officer threatened § 87(2)(b) and individuals with the use of force.

§ 87(2)(b) alleged that one of the male officers standing closest to her door said to her and her neighbors, “Shut the fuck up before we shoot somebody!” § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation K) Discourtesy:** On January 15, 2005, at § 87(2)(b) in Brooklyn, Officer Ohmeed Davodian threatened § 87(2)(b) with the use of force.

**Allegation L) Abuse of Authority:** On January 15, 2005, en route to the 71<sup>st</sup> Precinct stationhouse, Officer Ohmeed Davodian threatened § 87(2)(b) with the use of force.

§ 87(2)(b) alleged that in the lobby of § 87(2)(b) Officer Davodian pushed him against a wall and said, “If you spit in the building, it will be another fucking charge and we’ll beat you for that.” He also alleged that, en route to the 71<sup>st</sup> Precinct stationhouse, Officer Davodian said, “If we see any blood in the van, we’ll murder you.” § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation M) Abuse of Authority:** On February 1, 2005, at 1:20 p.m., at § 87(2)(b) and § 87(2)(b) in Brooklyn, Sergeant Eric Delman stopped the car in which § 87(2)(b) and § 87(2)(b) were occupants.

§ 87(2)(g)

§ 87(2)(b) The circumstances leading up to the stop involved the condition of § 87(2)(b)’s car and the fact that he was doing car repairs in the street. At the time Sergeant Delman stopped § 87(2)(b) the car’s rear hatch was raised so that the rear license plate was not visible. Also, the front of the car was damaged so that there were no headlights and front license plate, and there was a bag of tools on the hood. Although Sergeant Delman did not recall that the car was visibly damaged, he stated that he stopped § 87(2)(b) because 1) he wanted to verify who was the owner of the car and 2) because § 87(2)(b) was illegally doing car repairs in the street. *Kamins Search and Seizure* states that when an officer approaches of a stationary or parked vehicle, the situation is analogous to an approach of a citizen on the street (Encl. 6a-b). There is no need for any indicia of criminality as long as the officer’s questions are basic, or concern the driver’s identity, address, or destination. The officer need not have reasonable suspicion that the car occupants are involved in criminal activity, unless the officer detains the occupants or conducts a lengthy inquiry. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b) VTL § 398-d specifies that motor vehicle repair shops must display a shop sign and license (Encl. 1a-f). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

**Allegation N) Abuse of Authority: On February 1, 2005, at 1:20 p.m., at § 87(2) and § 87(2)(b) in Brooklyn, Sergeant Eric Delman refused to provide his name to § 87(2)(b)**

**Allegation O) Abuse of Authority: On February 1, 2005, at 1:20 p.m., at § 87(2) and § 87(2)(b) in Brooklyn, Officer Yuriy Posternak refused to provide his name to § 87(2)(b)**

**Allegation P) Abuse of Authority: On February 1, 2005, at 1:20 p.m., at § 87(2) and § 87(2)(b) in Brooklyn, Officer Vincent Schiavarelli refused to provide his name to § 87(2)(b)**

Patrol Guide Procedure 203-09 compels officers to provide their names and shield numbers upon request (Encl. 3a). § 87(2)(b) alleged that, right before the officers entered their car, she addressed a general question towards them, requesting their names. Sergeant Delman stated that he did provide his name and shield number to one of the civilians upon request. Officers Schiavarelli and Posternak did not recall this incident, but they were interviewed a year after it occurred. § 87(2)(b) never mentioned that his wife asked for the officers' names, and he was not cooperative in providing the contact information for § 87(2)(b).

§ 87(2) a witness to the alleged misconduct. § 87(2)(a) Gen.Mun. §50-H(3)

§ 87(2)(b), § 87(2)(g)

**Allegation Q) Abuse of Authority: On February 1, 2005, at 5:40 p.m., at the corner of § 87(2) Avenue and § 87(2)(b) Street in Brooklyn, Officer Joel Cummings the car in which § 87(2)(b) was an occupant.**

§ 87(2)(g)

At the moment that Officer Cummings approached § 87(2)(b) his car was double-parked. § 87(2)(b), § 87(2)(g)

*Kamins Search and Seizure* states that, "There are two groups of Vehicle and Traffic Law violations which will justify the stop of a vehicle... The second group...relates to traffic infractions committed by a motorist in the presence of a police officer...when he observes any of the following: ... a motorist who double parks" (Encl. 5a-e). § 87(2)(b) admitted that he double-parked his car. § 87(2)(g)

**Allegation R) Abuse of Authority: On February 1, 2005, at 5:40 p.m., at the corner of § 87(2) Avenue and § 87(2)(b) Street in Brooklyn, Officer Joel Cummings threatened to arrest § 87(2)(b)**

§ 87(2)(b) alleged that Officer Cummings said to § 87(2)(b) "Drive before I arrest you." § 87(2)(g), § 87(2)(b)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: